Honeywell, Inc. *and* De Sicora and Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL–CIO, Party In Interest

Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL–CIO[1] (Honeywell, Inc.) *and* De Sicora. Cases 18–CA–11465, 18–CA–11608, 18–CB–3020, and 18–CB–3038

April 27, 1992

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On November 6, 1991, Administrative Law Judge Gerald A. Wacknov issued the attached decision. The Respondents filed exceptions and supporting briefs, and the General Counsel filed exceptions. The Respondents filed answering briefs to the General Counsel's exceptions.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,[2] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Honeywell, Inc., its officers, agents, successors, and assigns, and the Respondent, Teamsters Local No. 1145, affiliated with the International Brotherhood of Teamsters, AFL–CIO, its officers, agents, and representatives, shall take the action set forth in the Order.

[1] The name of the Respondent Union has been changed to reflect the new official name of the International Union.

[2] The Respondents have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

In adopting the judge's ruling that the Repondents unlawfully agreed to accrete nonunion salaried technicians into the production and maintenance bargaining unit, we note that no new positions were created by the transfer of sensor production work to the Solid State Electronic Center following the sale of the Colorado Springs facility. Further, there was no change in the equipment used by technicians, the certifications needed by technicians, or the skills applied in the processing of silicon wafers for use in sensors and other applications. Finally, the same procedures are used by technicians regardless of whether the sensors are produced for research and development or for production.

Florence I. Brammer, Esq., for the General Counsel.
Marvin O. Granath, Esq., of Minneapolis, Minnesota, for Respondent Honeywell.
Eugene H. Keating, Esq. (Lindquist & Vennum) and *Robert V. Johnson, Esq.*, of Minneapolis, Minnesota, for Respondent Teamsters.

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge. Pursuant to notice, a hearing in this matter was held before me in Minneapolis, Minnesota, on April 2–5 and April 23, 1991. The charge in Case 18–CA–11465 was filed by De Sicora, an individual, on September 11, 1990; the charge in Case 18–CB–3020 was filed by Sicora on December 11, 1990; the charge in Case 18–CA–11608 was filed by Sicora on February 1, 1991; the charge in Case 18–CB–3038 was filed by Sicora on February 1, 1991. Thereafter, on March 5, 1991, after the issuance of various complaints and consolidated complaints, the Regional Director for Region 18 of the National Labor Relations Board (the Board) issued a final consolidated complaint and notice of hearing alleging violations by Honeywell, Inc. (Honeywell or the Employer) of Section 8(a)(1) and (2) of the National Labor Relations Act (the Act), and alleging violations by Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL–CIO (Teamsters or the Union) of Section 8(b)(1)(A) and (2) of the Act.

The parties were afforded a full opportunity to be heard, to call, to examine and cross-examine witnesses, and to introduce relevant evidence. Since the close of the hearing, briefs have been received from counsel for the General Counsel and counsel for each of the Respondents.

On the entire record, and based on my observation of the witnesses and consideration of the briefs submitted, I make the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, Honeywell, is a Delaware corporation with its principal office and place of business located in Minneapolis, Minnesota, and is engaged in the manufacture and nonretail sale and distribution of solid state components, heating and air-conditioning controls, and related products. In the course and conduct of its business operations Honeywell purchases and receives goods and materials valued in excess of $50,000 directly from points outside the State of Minnesota, and annually sells and ships goods and materials valued in excess of $50,000 directly to points outside the State of Minnesota. It is admitted, and I find, that Honeywell is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

II. THE LABOR ORGANIZATION INVOLVED

It is admitted that Respondent Teamsters is, and has been at all material times, a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Issue*

The principal issue in this proceeding is whether the Employer and Union entered into an unlawful agreement to accrete nonunion employees into a bargaining unit, and commenced to implement that agreement, in violation of the Act.

B. *The Facts*

Honeywell, a company that primarily performs sophisticated research and development work, operates a complex of 16 facilities in the Minneapolis, Minnesota metropolitan area. It employs approximately 9000 employees at these various facilities. Of this total number, approximately 2750 are hourly paid employees and are included in a single companywide bargaining unit represented by Respondent Teamsters. The recognition clause contained in a succession of collective-bargaining agreements describes the unit as being comprised only of ''hourly'' employees, but Honeywell and the Union also refer to these employees as production and maintenance employees. Some 6250 employees are salaried employees, and are commonly referred to as office and techinical employees (O&T). ''Salaried employees'' are specifically excluded from the contractual bargaining unit. The unit description has remained the same since 1959.

One of Honeywell's facilities is the Solid State Electronic Center (SSEC), which consists of several interconnected buildings in Plymouth, Minnesota, a suburb of Minneapolis. The SSEC is a semiconductor facility created approximately 23 years ago for the purpose of performing research and development work. It is the only Honeywell facility in the Minneapolis area engaged in the engineering and development of silicon semiconductors. SSEC employs approximately 700 employees. Prior to the events involved, there were no ''production'' employees working at SSEC; the Union represents only about 40 SSEC employees who perform carpentry, electrical, plumbing, sheet metal, air conditioning, stores and material handling (the receiving, warehousing, handling, and delivery of supplies to the various SSEC labs), factory clerk, janitorial, and food handling services. The remaining 660 employees of SSEC are O&T. Of this group, approximately 75–100 are classified as operations technicians. These ''techs'' work in 15–20 labs. Approximately 70 of the techs work in labs denoted as wafer fabrication (wafer fab) labs, and perform specific functions in the processing of silicon wafers which are made into integrated circuits for specific applications. Among other applications, these integrated circuits are the principal components of sensors. Sensors are utilized in various industries, including the aerospace and oil and gas industries, for the purpose of monitoring or sensing air or liquid pressures of various types. Approximately 20 of the techs work in sensor assembly labs or the sensor packaging area.

''Run cards'' accompany the wafers as they are processed through the wafer fab and sensor labs. The run cards designate the specific procedures to be performed on the wafer and denote the end product or destination of the integrated circuits that are cut from the wafers. In this manner wafer fab technicians know whether the resulting integrated circuits will become a component of a specific type of sensor or will be utilized for other purposes. Many of the same procedures are used on wafers even though the resulting integrated circuits will be used for different ultimate applications.

Prior to the fall 1990, no sensors were produced at SSEC. Rather, Honeywell had a facility located in Colorado Springs, Colorado, which processed wafers into integrated circuits and which also made sensors. Unlike SSEC which is considered to be a research and development facility, the Colorado Springs facility was established for production purposes. The employees at this facility were not represented by any labor organization.

Mike McEnelly, director of Minneapolis factory resources, testified that all the production work in the past had been done in Colorado Springs rather than at SSEC because SSEC had been strictly an R&D research facility up until that point. He explained that:

> Most of [the work] started at SSEC in Plymouth. The arrangement was or the way it worked was they would develop research and develop to get a product going at SSEC in Plymouth. Once it reached the production stage, if you will, then it was transferred to Colorado Springs and they did the production out there. Then when they sold the facility that work now is going to be—the production work would also be done at the Plymouth facility.

In late 1989, the Colorado Springs facility was sold to another company, and, in the fall of 1990, after constructing various sensor assembly labs at its SSEC facility in Plymouth, Honeywell commenced the production of the same types of sensors at SSEC that it had formerly produced at Colorado Springs. No employees, with the exception of about four engineers, were transferred from Colorado Springs to SSEC.

There are only two prerequisites for the position of operation technician: the applicant must have a high school degree and not be color blind. All job skills are acquired through intensive on the job training, and a tech is not permitted to work alone on any processes during an 8- to 12-month training period. In order to be qualified to work on a particular procedure within any given wafer fab or sensor lab without assistance from other techs or supervisors, the tech must be certified on that specific procedure. Certification involves hands-on use testing, verbal acceptance by the certified trainer that the tech knows how to perform the particular procedure, and a closed-book written test. A separate certification is required for each of several hundred specific processes carried out in the various wafer fab and sensor labs, and techs are continually in the process of adding to their certifications as this enhances their opportunities for advancement within SSEC.

Dr. Ken Allen is in charge of the sensor operations group which has responsibility for sensor engineering and operations. He testified that the wafer fab business operations of SSEC ''bounces up and down by area'' and, rather than laying off employees, the Employer attempts to maintain a stable and well trained work force by moving people around to

where they may be best utilized. Thus, because the wafer fab work was in a period of decline at the time the sensor assembly work was to commence, a decision was made to move some technicians from wafer fab to sensor assembly in order to provide jobs for them and keep them within SSEC. At the time of the hearing, all regular full-time employees working in sensor assembly, apparently about 20 positions, had previously worked in wafer fab. The work of the techs who continued to work in the wafer fab labs has not changed.

There are four current sensor products being assembled at SSEC which are in various stages of Honeywell's product life cycle chart. In addition, there are another 10 or 15 sensors that are in the very early development stage. Sensor assembly technicians provide valuable input to engineers in the development lab who are responsible for the designing and production of prototype sensors, and assist the development engineers in this process. For example, according to Dr. Allen, while a particular developmental sensor was under the control of the engineering development group, operations technicians in the sensor assembly area performed about half to two-thirds of the operations on the sensor. In this regard, there are weekly or biweekly meetings where the technicians have an opportunity to provide input to the engineers. Dr. Allen stated, ''[O]ne of the things we found is the success of bringing on a new product depends very strongly on the kind of feedback we get from technicians to engineering as to what kind of problems there are with building the product and how to do it better.''

The wafer fab techs work in labs which are also called ''clean rooms,'' and wear ''bunny suits.'' Clean rooms or labs are rooms in which the air is filtered so that it contains less than a prescribed number of foreign particles or contaminants per cubic foot of air. Bunny suits are the required apparel for clean room work, and consist of a coverall with a head piece, a face shield, booties, and gloves. Sensor assembly techs do not work in clean rooms. Rather, they work in labs which are also known as ''controlled rooms.'' The air in a controlled room is cleaner than the outside air, but it is controlled for atmospheric conditions such as temperature and humidity; it is also controlled to minimize electrostatic discharge. Sensor assembly techs wear modified bunny suits, consisting of smocks, booties, and gloves.

Engineers work closely with the techs in the wafer fab labs as well as the sensor assembly labs. The ratio of engineers to technicians is approximately one engineer for every two or three technicians. The equipment in the labs is generally operated by the techs, but engineers will occasionally operate the equipment if they are performing an experiment or troubleshooting problems. While the engineers have no supervisory authority over the techs, they may discuss a tech's deficiencies with the tech's supervisor. Salaried employees, rather than hourly maintenance employees, calibrate and maintain lab equipment; and when maintenance employees (who must also wear modified bunny suits in the labs) enter the labs for janitorial purposes, or to repair or troubleshoot electrical wiring or plumbing problems, the sensor or wafer work in the labs must be protected or discontinued.

Both the wafer fab labs and sensor assembly labs operate around the clock on a three-shift basis. There are two individuals who supervise the sensor assembly techs. These supervisors work on the first shift. During the second and third shifts, the sensor assembly techs report to wafer fab supervisors. There is no common supervision between the SSEC bargaining unit employees and the technicians or any other salaried employees.

Dr. Allen testified that the pool of operations techs constitutes Honeywell's best sources of engineering techs. Two years of direct tech experience is generally considered to be the equivalent of 1 year of technical school. Thus, 4 years' experience as an operations tech is roughly equivalent to an Associate degree, and with such experience an individual is eligible for consideration as an engineering tech.

Many of the basic skills learned in the wafer fab labs are utilized by the sensor assembly techs, such as understanding the computerized documentation system, and the ability to solve problems which the tech may encounter. Dr. Allen testified that after a tech from wafer fab has undergone the total quality training process, he or she can be trained in sensor skills in less that half the time it takes to train a new employee.

Also, techs, together with engineers and supervisors, attend work group meetings on alternate weeks. Training is provided with regard to such matters as group decisionmaking and how to conduct meetings. This training is considered important according to Dr. Allen, as the Employer thereby encourages the technicians to run their own group work meetings, and to make beneficial recommendations to management.

All salaried employees are eligible to bid for other salaried jobs at any of the Employer's Minneapolis facilities under the Job Opening System (JOS). Technician jobs are first posted and filled within SSEC. If there are no qualified applicants, the job is posted throughout the Employer's Minneapolis facilities. In the absence of qualified applicants, new technicians are hired from an employment agency. The ultimate decision to hire a new employee is made by the SSEC supervisor who will supervise the employee. The hiring decision is based entirely on the qualifications of the applicant. The terms and conditions of employment and policies and procedures for salaried employees are set forth in an Office and Technical (O&T) manual. This manual does not relate to bargaining unit employees.

The terms and conditions of employment of bargaining unit employees are set forth in the collective-bargaining agreement and in a manual distinct from the O&T manual. After jobs are posted on appropriate bulletin boards throughout the Minneapolis area, the list of bidders is compiled at the Employer's general offices in Minneapolis, where the seniority of the bidders is reviewed and the job awarded to a qualified bidder with the greatest seniority. Customarily, there is no job interview for the position.

Salaried employees receive benefits not available to bargaining unit employees, such as the option to participate in a profit-sharing plan, full payment for medical leave, and the ability to buy or sell vacation time.

Bryan Johnson is SSEC human resource manager, and maintains an office at SSEC. He is in charge of benefits administration, salary programs, hiring and staffing, training and development, and other various employee-related activities for the salaried employees. His responsibilities do not extend to the SSEC bargaining unit employees except to the extent that all SSEC employees are eligible to participate in primarily social types of activities.

Mike McEnelly, director of Minneapolis factory human resources, maintains his office at the Employer's general headquarters rather than at SSEC. He has exclusive responsibility over the administration of the collective-bargaining agreement with the Union and also with another labor organization, the Honeywell Plant Protection Association, which represents a unit of guards. McEnelly deals with the contractual job posting system, arbitration, negotiations during the term of the contracts, and other matters relating solely to bargaining unit employees.

McEnelly testified that commencing in the fall 1989, he and other management personnel entered into discussions with various union representatives, including William Tyler, secretary-treasurer of the Union, regarding the impending sale of the Colorado Springs facility and the transferring of some of the work to SSEC. McEnelly testified that the initial meeting with the Union was informational. The Union was told that some of the work was going to be coming back to Minneapolis in the form of production work.

Thereafter McEnelly and Tyler discussed the matter by phone on various occasions, and at some point, according to McEnelly, Tyler stated that the Union ''agreed'' that the work being transferred from Colorado Springs was production work and that, as such, it constituted bargaining unit work.

Union Secretary-Treasurer Tyler testified that he advised McEnelly that, in accordance with past practice, the Union was willing to accept the incumbent technicians into bargaining unit jobs if they so chose, and that their O&T seniority would automatically become their bargaining unit seniority, and the jobs which they were performing would not be posted for bid under the collective-bargaining agreement. Tyler testified that during these conversations with McEnelly it had not been determined what if any work at SSEC would be production work, and that ''we were just speculating'' with regard to this matter.

Thereafter, the Employer commenced to implement this agreement by conducting several meetings with the technicians, advising them of the fact that they would become hourly employees subject to the Union's collective-bargaining agreement. A memo to ''manufacturing technicians'' was issued on July 17, 1990, announcing that two meetings, one for the first shift and one for the second-shift technicians, would take place on July 26, 1990. The terminology ''manufacturing technicians'' had not been applied to any technicians prior to this time. The memo entitled ''O&T to Bargaining Unit Transition'' is as follows:

> A communication session for Manufacturing Technicians regarding the transition of certain technician jobs from O&T to the Bargaining Unit has been scheduled for Thursday, July 26. Corporate Labor Relations will be in attendance to provide information and answer questions from employees. All manufacturing Technicians are encouraged to attend and participate.

Sharon Nelson, manager of factory compensation, maintains her office at the Minneapolis corporate headquarters. Her supervisor is McEnelly, and she is in charge of the development and administration of pay and benefit programs for all union hourly employees in the Minneapolis area. She and McEnelly spoke to the assembled technicians at the July 26, 1990 meetings. The meetings were held to acquaint the technicians with the benefits under the collective-bargaining agreement. Nelson testified that her purpose in speaking to the technicians was to persuade them to accept union production jobs.

Steven Dryden, senior technician of ion implantation department, works in the ion implant lab which is one of the wafer fab labs. Dryden testified that between 90 and 100 technicians and engineers attended the July 26, 1990 meeting. Sharon Nelson spoke about the benefits under the union contract. A question and answer session followed. McEnelly stated that between 80–90 technician jobs may be affected by the change. At that time there were a total of about 90 technicians in both the wafer labs and sensor assembly labs; of these, only about 20 worked in the sensor assembly labs. Dryden asked whether Minnesota was a right-to-work State. McEnelly said ''No, we are not.'' Then Dryden asked, ''What is the bottom line if we do not join the union.'' McEnelly replied, ''You will not be working for Honeywell.''

Jack Nolan, senior lab technician in the dry etch lab, another wafer fab lab, testified that at the meeting McEnelly stated that 75–100 technicians would be affected, and that when the question was asked, ''What if we don't want to become union,'' McEnelly's blunt response was, ''You will not work for Honeywell.'' Tammy Brown, sensor lab technician, testified similarly.

McEnelly testified that the July 26, 1990 meetings were held in order to answer the employees' anticipated concerns about the production work that was coming back from Colorado Springs, and ''also hopefully get some of those people to go into the bargaining unit.'' At that point in time the extent of the production work that would be performed at SSEC was unknown, and McEnelly did not specify what areas might be deemed to constitute production work. He was asked various questions with respect to the application of the collective-bargaining agreement, such as whether the technicians could have their own separate union, whether they had to join the Union, and how much their union dues would be.

McEnelly testified that he ''was asked the question in my belief in regard to if they worked on that production work if they had to be a member of the bargaining unit, yes.'' Thereupon, the Employer's counsel asked a series of leading questions regarding McEnelly's subjective understanding of the question and his response to the question, and McEnelly agreed with the Employer's counsel that McEnelly was ''of the opinion that the union security clause would require such a person to be a union member or not be employed in the bargaining unit.'' According to McEnelly this exchange, with some variation, occurred at both employee meetings on that day.

Lori Zinnel obtained a full-time technician position through an employment agency, Open Door Temporary Agency, in November 1990. She is an operation technician in the sensor lab and continues to receive a paycheck through the employment agency rather than from Honeywell. After 6 weeks on the job she was told by an SSEC human resources representative that she was one of a group of agency employees who would be hired by Honeywell after working 520 hours or about 3 months. She would then no longer be an hourly employee of the agency, but would become a salaried

Honeywell employee and would be entitled to the increased salary and benefits that salaried Honeywell employees are eligible to receive. Zinnel accrued the requisite number of hours by the end of January 1991. On February 1, 1991, Bryan Johnson, SSEC human resources manager, told a small group of agency employees, including Zinnel, that because of the problem that had arisen involving the technicians, they could not be hired by Honeywell until the matter was resolved.

De Sicora, the Charging Party, works in various wafer fab labs as a technician. Sicora was not persuaded that it was to her benefit to become an hourly bargaining unit employee. On or about August 8, 1990, she circulated a petition among the technicians. One hundred and one technicians signed the petition within a period of a day and a half, and Sicora presented it to the Employer. The petition states as follows:

> We the undersigned are stating in this petition the following:
>
> As technical employees of the Solid States Electronics Center we are concerned with the assumption that we desire to belong to the Union—we do not. On the grounds listed below we strongly protest this assumption.
>
> (1) Technicians are salaried employees, and we were hired as such. Union contract of 1990 states salaried employees are *excluded*.
>
> (2) Our job titles of associate, research or other such technicians are not listed in said contract of 1990.
>
> (3) Our jobs have not changed prior to or since arrival of Sensor process from Colorado Springs.
>
> (4) We are concerned with protecting and improving our working environment, not forfeiting it.
>
> We have notified the National Labor Relations Board of our concerns as to this matter. We feel this needs to be addressed.

Receiving no satisfaction from the Employer as a result of the petition, Sicora filed the initial unfair labor practice charge against Honeywell on September 11, 1990, in order to prevent it from implementing its apparent intent to accrete the technicians into the bargaining unit. In October 1990, the Union countered with the filing of a grievance under the collective-bargaining agreement, maintaining that employees represented by the Union were entitled to perform the new production work and that, in accordance with the terms of the collective-bargaining agreement, the Employer was obligated to post the work for biding by bargaining unit members. An arbitration hearing was scheduled for December 12, 1990. On December 11, 1990, the day prior to the scheduled arbitration hearing, Sicora filed the initial unfair labor practice charge against the Union alleging that the Union, in collaboration with the Employer, was engaging in similar unlawful conduct.

It is clear from the record that the arbitration hearing, conducted on December 12, 1990, before a permanent arbitrator, consisted of a brief, nonadversarial, 1-hour meeting, in which the technicians were unrepresented, and that the Union and Employer simply agreed before the arbitrator, as they had agreed earlier, that the work in question was production work covered by the collective-bargaining agreement.

The arbitrator issued his award on December 27, 1990. The language in the arbitrator's decision demonstrates that the respective positions of the Employer and Union were identical, and, without any discussion or analysis of the production work involved, or its relationship to the research and development work being conducted simultaneously by the same employees, or the community of interest which exists among all SSEC salaried personnel in general and technicians in particular, the arbitrator determined, in three succinct paragraphs, that:

> Prior arbitration awards have established the principle that production work in the twin city area is in the sole jurisdiction of the Local 1145 bargaining unit. Some awards have dealt with the sometimes difficult problem of distinguishing between research and development on the one hand and production on the other, but that is not at issue in this grievance. The company admits that, although the SSEC facility was initially established solely to engage in R. and D., it is now engaged in some production work. Approximately 13 employees are engaged in production work full time.[1]
>
> The undisputed facts establish that work involved is production work at a Company facility in a twin city suburb. The clear and unambiguous language of the General [collective bargaining] Agreement, as construed by an unbroken line of arbitration awards extending back at least twenty seven years, places that work in the jurisdiction of the Local 1145 bargaining unit. Assignment of the work in question to O. & T. employees violates the General Agreement.
>
> Approximately 3600 employees are currently in the bargaining unit. 13 Honeywell employees are engaged full time in production work and a number of others spend part time on it. The work done by those employees is similar to that done by bargaining unit technicians in the twin city area for many years. For at least 20 years bargaining unit personnel have been employed in ''super clean rooms'' like those at SSEC. Other bargaining unit work at SSEC has been done for almost 20 years by bargaining unit members engaged in maintenance, material handling and the like. Bargaining unit employees and those doing the disputed work are under

[1] At the hearing the parties did not provide an explanation for the arbitrator's statement that 13 technicians were engaged in production work. The Union, at fn. 24 on p. 21 of its brief, discusses the contents of a particular document presented to the arbitrator. The General Counsel has moved to strike that footnote on the basis that it ''describes and draws conclusions from an alleged document which is not in the record.'' The Union, in opposition to the General Counsel's motion, states that ''Local 1145 did not offer the document referred to in footnote 24 into evidence because the relevant information referred to therein was obtained through actual witnesses at the hearing.'' Also, the Union states that ''The Counsel for the General Counsel is attempting to obscure the fact that the evidence showed that only thirteen people are performing production work at SSEC.'' My understanding of the record is that more than 20 sensor assembly technicians are engaged in work that may reasonably characterized as both production and R&D work. The General Counsel's motion to strike fn. 24 of the Union's brief is hereby granted.

common supervision and common labor relations policies.

The arbitrator also found that the Employer's failure to post the production jobs for bidding by any employee in the ''twin city wide'' bargaining unit was a clear violation of the General Agreement.

On January 28, 1991, McEnelly wrote to the Union stating, inter alia, that:

> This letter will document our agreement regarding implementation of Arbitration Award C-827.
>
> The thirteen (13) full-time Sensor Production jobs identified by the Arbitrator will be posted over a period of two months starting February 1991. As other Sensor Production openings occur they will be posted in the bargaining unit.

By memo to ''All SSEC Employees'' dated January 30, 1991, the employees were advised that:

> In implementation of Labor Arbitrator Arlen Christenson's arbitration award of December 27, 1990 on Local 1145's grievance over SSEC production work, we will be posting SSEC production jobs for filling by Local 1145 bargaining unit employees pending final resolution of the related National Labor Relations Board charges. This means that over the next two months, thirteen jobs will be posted in Sensor Assembly. Thereafter, job openings for Sensor production employees will be posted in the Local 1145 bargaining unit as they are needed.
>
> *No SSEC salaried employees will be laid off or terminated as a result of this posting.* [Original emphasis.]

In February 1991, pursuant to the aforementioned agreement with the Union and notification to the employees, several sensor assembly positions were posted for bid. As of the date of the hearing, the jobs had been posted for the requisite length of time under the contract, and bids had been received. However, no positions have been filled.

C. *Analysis and Conclusions*

The Employer and Union are seeking to add a relatively small group of between 13 and 100 O&T employees to an existing bargaining unit as a result of the establishment of new laboratories for the assembly of sensors.

The establishment and staffing of a new department or facility raises an accretion issue when a union and employer agree that the employees who have been or will be assigned to staff the new department or facility shall automatically be included within a preexisting bargaining unit. If a proper accretion exists, then the effected employees have no right to select or decline to select their own bargaining representative; and, if the collective-bargaining agreement contains a union-security clause, they have the option of either becoming union members or forfeiting their jobs. If an accretion does not exist, then the union has no legitimate claim to the work, and may not interfere with the employees' job opportunities. See *Safeway Stores*, 256 NLRB 918 (1981); *Compact Video Services*, 284 NLRB 117 (1987).

Issues of accretion are representational issues for the Board to determine. *Asbestos Carting Corp*., 302 NLRB 197 (1991); *Marion Power Shovel Co*., 230 NLRB 576 (1977); *International Sound Technicians*, 269 NLRB 133 (1984). Although unions and employers are not precluded from initially attempting to resolve such issues through contractual grievance and arbitration machinery, the Board's determination takes precedence. *Carey v. Westinghouse Electric Corp*., 375 U.S. 261 (1964); *Cold Bell Storage v. Local 544*, 885 F.2d 436 (8th Cir. 1989); *Asbestos Carting Corp*., 302 NLRB 197 (1991); *Marion Power Shovel Co*., 230 NLRB 576 (1977).

In *Compact Video Services*, supra, the Board sets forth its policy regarding accretions, as follows:

> The Board has followed a restrictive policy in finding accretions to existing units because employees accreted to an existing unit are not accorded a self-determination election and the Board seeks to insure that the employees' right to determine their own bargaining representative is not foreclosed. *Towne Ford Sales*, 270 NLRB 311 (1984), affd. sub nom. *Machinist District Lodge 190 v. NLRB*, 759 F.2d 1477 (9th Cir. 1985). The Board thus will find a valid accretion ''only when the additional employees have little or no separate group identity and thus cannot be considered to be a separate appropriate unit and when the additional employees share an o overwhelming community of interest with the preexisting unit to which they are accreted [footnotes omitted].'' *Safeway Stores*, 256 NLRB 918, 918 (1981).

Regarding the requirement that, for an accretion to exist, the additional employees must have little or no separate group identity, it should be noted that neither the Employer nor the Union has set forth an identifiable group of employees whom they would propose to accrete to the existing bargaining unit. At the July 26 meetings, to which all the approximately 100 wafer fab and sensor assembly technicians were invited, the Employer stated that virtually all of them would possibly be effected by the ''transition'' from O&T to the bargaining unit. This caused each and every technician to sign the petition stating that they were opposed to being included within the unit; and at no time thereafter did the Employer state that their concerns in this regard were unfounded. Further, information apparently presented some 6 months later to the arbitrator caused him to conclude that the group to be included within the existing bargaining unit consisted of only 13 sensor assembly technicians even though it appears there were more 13 sensor assembly technicians working in the various sensor assembly labs at the time.

Thus, insofar as the record shows, there is some amorphous group of between 13 and 100 wafer fab and sensor assembly technicians who may comprise the ''transition'' group of employees; and not even the 13 technicians to whom the arbitrator referred have been specifically identified. Under these circumstances it is impossible to conclude that, in the language of the Board's *Safeway* and *Compact Video Services* cases, supra, the smaller group of employees would not, itself, constitute an appropriate unit, as the parameters of the smaller group of employees have not been established. Accordingly, neither the Employer nor the Union have demonstrated that the group of employees proposed to

be accreted cannot be considered to be a separate appropriate unit.

It is also clear that any given group of SSEC sensor assembly technicians has, at best, a relatively minimal community of interest with bargaining unit employees, and that the technicians do not, in accordance with the Board's requirement enunciated in *Compact Video Services*, supra, ''share an overwhelming community of interest with the preexisting unit to which they are accreted.'' To the contrary, the abundant, clear, and uncontroverted record evidence shows that they share an overwhelming community of interest with other Honeywell O&T employees in general, and with other SSEC O&T employees in particular, in terms of of administrative and day-to-day supervision, benefits, promotional opportunities, training, job skills and interaction, employee interchange, resolution of grievances, vacation and retirement programs, and virtually every other aspect of their employment relationship.

The simple fact is that the current sensor assembly technicians, from the very outset of their employment as wafer fab technicians and extending for many years to the present date, have been, in effect, members of a separate, clearly identifiable group of nonrepresented salaried O&T employees, with distinct, historical lines of demarcation between their employment relationship with the Employer and that of bargaining unit employees. To be sure, as the Employer and Union emphasize, there is an umbrella of interests commonly enjoyed by both groups. Thus, all employees may belong to the same credit union, play together on the same sports teams, join a variety of clubs, organizations, and support groups, eat in the same cafeterias, and find themselves on the same metropolitan area buses on the way to work. Moreover, there is certain limited daily contact among bargaining unit employees and SSEC technicians who rely on bargaining unit employees for support and janitorial services; and there are bargaining unit ''technicians'' who work at other facilities of the Employer but who do not interact with or perform similar work as the SSEC technicians. However, these factors, cumulatively, are insufficient to satisfy the Board's clear requirement that there be an ''overwhelming'' community of interest between the two groups.

Accordingly, I conclude that neither of the two criteria enunciated by the Board as necessary components of a finding of accretion have been satisfied by the Respondents.

It is clear that the Respondents entered into an agreement to accrete some unspecified group of employees into the bargaining unit. Director of Minneapolis Factory Human Resources McEnelly so testified, and Union Secretary-Treasurer Tyler's testimony shows that the parties further agreed to the manner in which the employees would be accreted. Such an agreement is tantamount to premature recognition of the Union as the collective-bargaining representative of incumbent employees and of employees who may be hired or assigned to perform the work in question, and, in the absence of a proper accretion, is violative of Section 8(a)(2), and Section 8(b)(1)(A) of the Act. See *Safeway Stores*, supra.

Thereafter, in an attempt to implement the agreement, the Employer sought to ''persuade'' the technicians to accept bargaining unit status. During an employee meeting scheduled for this purpose, McEnelly, in response to an employee's question, told the assembled technicians that if they elected not to join the Union they would no longer be working for Honeywell. McEnelly, responding to leading and suggestive questions, testified that his reply to employee Dryden's two sequential questions was not intended to be threatening, and that he was, in effect, simply attempting to advise the employees that, since Minnesota is not a right-to-work State, the law required that in the event they elected to become bargaining unit members they would also have to join the Union. At no point during the meeting were the employees told that if they elected not to accept bargaining unit positions they would be transferred to O&T jobs and would remain Honeywell employees.

It is reasonable to conclude that the assembled employees would not have understood McEnelly's response as a recitation of subtle legal distinctions, but rather as a threat of discharge in the event they did not agree to become unit members; and it appears that McEnelly, with considerable expertise in the field of labor relations, could have articulated his meaning more clearly in the event he did not want to be misunderstood. It may also be reasonably presumed that had the employees been less recalcitrant, McEnelly's statement would have ''persuaded'' the technicians to accept bargaining unit status in lieu of discharge, and thus the Respondents would have accomplished their intended objective. I conclude that McEnelly intended to convey to the employees the very message that they understood, and that McEnelly's remark constituted a threat to discharge employees; I therefor find that it is violative of Section 8(a)(1) of the Act, as alleged.

Moreover, as it has been determined that the Respondents' agreement to accrete the employees into the bargaining unit was unlawful, any attempt to ''persuade'' the employees to accept bargaining unit status in furtherance of the agreement would similarly appear to be unlawful, regardless of whether a direct threat was made or intended.

Following Honeywell's unsuccessful attempt to implement the Respondents' agreement, the Union took a more direct approach by filing a grievance in order to obtain an arbitrator's decision that could be utilized to compel compliance by the technicians. Shortly after the arbitrator found that some 13 employees constituted, in effect, an accretion to the bargaining unit, the Respondents entered into a subsequent agreement to implement the arbitrator's decision by posting SSEC sensor assembly jobs for filling by bargaining unit employees ''pending final resolution of the related National Labor Relations Board Charges.'' The posting of the positions is the first step in implementing the arbitrator's award, which decision, as the foregoing analysis shows, is clearly contrary to Board law. Under these circumstances, I further find that by commencing to implement the arbitrator's award, Honeywell has thereby violated Section 8(a)(2) of the Act, and the Union has thereby violated Section 8(b)(1)(A) of the Act, as alleged. See *Port Chester Nursing Home*, 269 NLRB 150 (1984).

There remains the matter of approximately five technicians who were employees of the employment agency and who were admittedly promised permanent positions with Honeywell as O&T employees on the completion of a prescribed number of hours of work. The permanent employment of these employees[2] has been postponed pending the resolution

[2] Sec. 2(2) of the Act provides that ''[t]he term 'employee' shall include any employee and shall not be limited to the employees of a particular employer.''

of the accretion matter. Apparently the Union did not agree that these agency employees, like the Employer's permanent technicians, would be automatically accepted as bargaining unit employees. Thus, as a direct result of the Respondents' unlawful agreement that bargaining unit members are entitled to the jobs in question, these individuals who were promised permanent employment have been denied the additional wages and benefits that they would have otherwise immediately enjoyed. While the complaint contains no specific allegation regarding these employees, it is clear that this matter has been fully litigated, with evidence on the issue having been presented both by the General Counsel and the Employer, and the facts are not in dispute. Moreover, the General Counsel has requested a make-whole remedy for these employees in her brief, and the Respondent has not maintained that this request is improper. Accordingly, I shall provide a remedy for these employees, infra, as if the complaint had specifically alleged that they were denied employment in violation of Section 8(a)(3) of the Act.

The Respondents maintain that the charges are time-barred by Section 10(b) of the Act which requires the filing of a charge not later than 6 months after an unfair labor practice occurs. According to the Employer, ''Here the complaint was not filed until some thirteen years after the collective bargaining agreement, by which Honeywell recognized the Union as the collective bargaining agent of all production and maintenance employees, was applied to SSEC.'' And the Union, similarly, states in its brief that ''SSEC salaried technicians knew of the existence of the collective bargaining agreement, knew that it covered production work, and knew that production work was coming into SSEC from Colorado Springs prior to July of 1990.'' Accordingly, the Union argues, since the SSEC technicians had such knowledge at least as early as April 1990, the initial charge should have been filed within 6 months of that time.

The Respondents' contentions are without merit. The recognition clause of the collective-bargaining agreement expressly includes all hourly paid employees, expressly excludes all salaried employees, and is silent regarding production and maintenance employees. Charging Party Sicora filed the initial charge less than 2 months after she and the other salaried technicians, specifically excluded from the bargaining unit, were first advised by memo dated July 17, 1990, of a ''transition of certain technician jobs from O&T to the bargaining unit.'' Section 10(b) of the Act is satisfied if a charge is filed not more than 6 months after salient facts or circumstances which may constitute an unfair labor practice are clearly and unequivocally conveyed to an effected party. See *Southern California Edison Co.*, 284 NLRB 1205 fn. 1, 1209–1210 (1987).

On the basis of the foregoing, I find that Honeywell has violated and is violating Section 8(a)(1) and (2) of the Act, and that the Union has violated and is violating Section 8(b)(1)(A) and (2) of the Act.

CONCLUSIONS OF LAW

1. Honeywell is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Honeywell has violated Section 8(a)(1) and (2) of the Act by entering into an unlawful agreement with the Union to accrete an unspecified group of employees into the collective-bargaining unit represented by the Union, by attempting to implement an arbitration award which improperly determines that SSEC employees constitute an accretion to the bargaining unit, by threatening employees with discharge in the event they do not elect to become a part of the bargaining unit, and by failing to hire certain employment agency employees as permanent Honeywell employees.

4. The Union has violated Section 8(b)(1)(A) and (2) of the Act by entering into an unlawful agreement with the Employer to accrete an unspecified group of employees into the collective-bargaining unit represented by the Union, and by, in collaboration with the Employer, attempting to implement an arbitration award which improperly determines that SSEC employees constitute an accretion to the bargaining unit.

THE REMEDY

Having found that the Employer violated and is violating Section 8(a)(1) and (2) of the Act, I recommend that it cease and desist therefrom, and that it rescind any agreement with the Union regarding the accretion of SSEC employees into the bargaining unit unless and until such time as a majority of employees in an appropriate SSEC bargaining unit have selected the Union as their bargaining representative. I further recommend that the Employer cease implementing the arbitrators' accretion award, and that it make whole certain employees who, but for the Employer's unlawful conduct, would have become permanent employees of the Employer. Backpay is to be computed in the manner prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest on such backpay to be computed in accordance with the Board's decision in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). I further recommend that the Employer be required to post an appropriate notice attached hereto as ''Appendix A.''

Having found that the Union has violated and is violating Section 8(b)(1)(A) and (2) of the Act, I recommend that it cease and desist therefrom, and that it rescind any agreement with the Employer regarding the accretion of SSEC employees into the bargaining unit unless and until such time as a majority of employees in an appropriate SSEC bargaining unit have selected the Union as their bargaining representative. I further recommend that the Union cease implementing, in collaboration with the Employer, the arbitrators' accretion award. Finally, I recommend that the Union be required to post an appropriate notice attached hereto as ''Appendix B.''

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[3]

ORDER

A. The Respondent, Honeywell, Inc., Plymouth, Minnesota, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Entering into any agreement with Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters,

[3] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

AFL–CIO, regarding the accretion of SSEC employees into the Teamsters bargaining unit unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected the Union as their collective-bargaining representative.

(b) Implementing any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

(c) Threatening SSEC employees with discharge in the event they refuse to become members of the Teamsters collective-bargaining unit.

(d) Failing and refusing to hire certain employment agency employees as permanent Honeywell employees.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful agreements with the Union regarding the accretion of SSEC employees into the bargaining unit and the implementation of the arbitrator's award requiring such accretion.

(b) Hire as permanent Honeywell employees the various employment agency employees who would have been hired as permanent Honeywell employees, and make them whole for any loss of pay or other benefits.

(c) Post at each of its facilities in the Minneapolis area where notices to employees are customarily posted copies of the attached notice marked ''Appendix A.''[4] Copies of the notice on forms provided by the Regional Director for Region 18, after being signed by Honeywell's representative, shall be posted by it immediately upon receipt thereof, and be maintained by Honeywell for 60 consecutive days thereafter. Reasonable steps shall be taken by Honeywell to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps Honeywell has taken to comply.

B. The Respondent, Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL–CIO its officers, agents, and representatives, shall

1. Cease and desist from

(a) Entering into any agreement with Honeywell, Inc. regarding the accretion of SSEC employees into the Teamsters bargaining unit unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected the Union as their collective-bargaining representative.

(b) Implementing any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

(c) In any like or related manner restraining or coercing employees in the exercise of their rights guaranteed to them under Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Rescind the unlawful agreements with Honeywell regarding the accretion of SSEC employees into the bargaining unit and the implementation of the arbitrator's award requiring such accretion.

(b) Post at it union offices and on each of its in-plant bulletin boards at Honeywell facilities in the Minneapolis area where notices to members are customarily posted copies of the attached notice marked ''Appendix B.''[5] Copies of the notice, on forms provided by the Regional Director for Region 18, after being by Teamsters representative, shall be posted by it immediately upon receipt thereof, and be maintained by the Union for 60 consecutive days thereafter. Reasonable steps shall be taken by the Union to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent Union has taken to comply.

[4] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

[5] See fn. 4 supra.

APPENDIX A

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the act gives employees these rights.

> To organize
>
> To form, join, or assist any union
>
> To bargain collectively through representatives of their own choice
>
> To act together for other mutual aid or protection
>
> To choose not to engage in any of these protected concerted activities.

WE WILL NOT enter into any agreement with Teamsters Local No. 1145, affiliated with International Brotherhood of Teamsters, AFL–CIO, whereby it is agreed that SSEC employees will be accreted into the existing Teamsters bargaining unit, unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected Teamsters Local No. 1145 as their collective-bargaining representative.

WE WILL NOT implement or enter into any agreement with Teamsters Local 1145 to implement any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

WE WILL NOT threaten employees with discharge if they refuse to agree to be included within the Teamsters bargaining unit.

WE WILL NOT delay the permanent hiring of any employment agency employees, and we will permanently hire any employment agency employees who would otherwise have been hired as Honeywell employees, and make them whole, with interest, for any loss of pay or benefits.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind any agreements we have entered into with Teamsters Local No. 1145 regarding the accreting of SSEC employees into the Teamsters bargaining unit.

HONEYWELL, INC.

APPENDIX B

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT enter into any agreement with Honeywell, Inc. whereby it is agreed that SSEC employees will be accreted into the existing Teamsters bargaining unit, unless and until such time as a majority of SSEC employees in an appropriate bargaining unit have selected Teamsters Local No. 1145 as their collective-bargaining representative.

WE WILL NOT implement or enter into any agreement with Honeywell, Inc. to implement any arbitrator's award requiring the accretion of SSEC employees into the Teamsters bargaining unit.

WE WILL NOT in any like or related manner restrain or coerce SSEC employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL rescind any agreements we have entered into with Honeywell, Inc. regarding the accreting of SSEC employees into the Teamsters bargaining unit.

TEAMSTERS LOCAL NO. 1145